

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 89 of 2005

Munni Devi W/o Heera Singh,
D/o Late Sri Har Singh,
R/o Vill Mazia Khet, Kaphakhet,
P.O. Bageshwar,
Tehsil and District Bageshwar. Appellant

Versus

Heera Singh S/o Tej Singh,
R/o Village Devalchora Patti Dug,
P.O. Devalchora,
Tehsil and District Bageshwar. Respondent

Mr. B.D. Pande, Advocate for the appellant.
Mr. Dinesh Chauhan, Advocate for the respondent.

JUDGMENT

**Coram: Hon. Rajeev Gupta, C.J.
Hon. P.C. Pant, J.**

P.C. PANT, J. (Oral)

This appeal is directed against the judgment and order dated 25.06.2005 passed by District Judge, Bageshwar, in Original Suit No. 8 of 2005 whereby the petition of divorce moved by the husband is allowed subject to the condition that he pays the alimony as directed in the order.

2) Brief facts of the case are that Sri Heera Singh (present respondent) got married to the appellant Munni Devi in the year 1984 and they lived together till 1995. Out of the wedlock, one son and three daughters were born, but thereafter it was alleged by the petitioner (respondent) that the appellant left him without sufficient reason. Earlier a petition for divorce was filed before Civil Judge, Almora, but the same was dismissed. The present appellant also filed an application under section 125 of the Code of Criminal Procedure, 1973 for maintenance against her husband (respondent) which appears to have been decided and the parties continued to live separately. Thereafter, the respondent filed the divorce petition before the District Judge, Bageshwar on the ground of desertion and adultery. The

appellant contested the petition alleging that it was the respondent, who forced her to leave the matrimonial house as he used to beat her. It was further pleaded by the appellant before the Trial Court that she was ousted from the house of her husband along with her three daughters, while the son was detained by the respondent. She denied the grounds mentioned in the divorce petition.

3. The Trial Court, on the basis of the pleadings, framed following three issues:

- i. Whether the marriage between the parties is liable to be dissolved by the decree of divorce as alleged in the petition?
- ii. Whether the suit is barred by the principle of res judicata as alleged in para 16 of the Written Statement?
- iii. What relief, if any, the petitioner (present respondent) is entitled to?

4. After recording the evidence and hearing the parties, the trial court decreed the divorce petition on the condition that the husband pays Rs. 75,000/- to the appellant and Rs. 75,000/- to each of the three daughters.

5. We have heard learned counsel for the parties and perused the lower court's record.

6. The husband (present respondent) in his divorce petition has sought dissolution of the marriage on the ground that his wife (appellant) has deserted him without any sufficient reason. The husband has also pleaded before the Trial Court that his wife is living in adultery. However, the Trial Court has neither framed any issue on the point of desertion nor on the point of adultery. Though the evidence has been adduced by the parties on the lines of the pleadings, but not a single word has been discussed in the impugned judgment as to whether a case of desertion or that of adultery is made out or not.

7. In the circumstances, we are of the view that the trial court has erred in law, firstly, in not framing the issues on the basis of the pleadings particularly on the points of desertion and adultery. The trial court has further erred in not discussing the evidence at all as to the grounds of divorce before allowing it. In the circumstances, we are at loss to appreciate the evidence on the questions of desertion and adultery. We feel it necessary to remand the case to the trial court for framing the issues on the points of desertion and adultery on the ground of which, the divorce was sought and permit the parties to lead additional evidence, if any, on those issues and decide the petition afresh giving findings on all the issues.

8. For the reasons as discussed above, this appeal is allowed. The impugned judgment and decree is set aside. The case is remanded back to the Trial Court for Framing additional issues and deciding the case afresh in the light of the observations made above. No order as to costs.

9. The amount of Rs. 2,00,000/- deposited by respondent Heera Singh after the judgment and decree towards permanent alimony, may be withdrawn by him.

(P.C. Pant, J.)
25.02.2006

(Rajeev Gupta, C.J.)
25.02.2006